

BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the
Against:

Hana Kim, PT

Physical Therapist License No. PT 32231

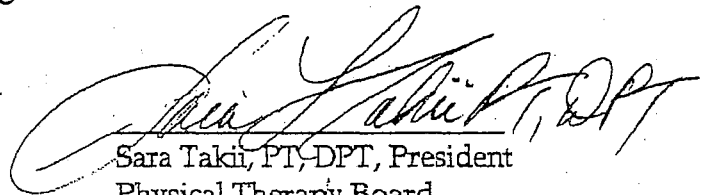
) Case #: 1D 2007 65113
)
)
)
)
)
)

OAH # 2010041195

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California, as its Decision in the above-entitled matter.

This decision shall become effective on April 28, 2011.

It is so ordered this March 29, 2011.


Sara Takii, PT, DPT, President
Physical Therapy Board
Of California

BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HANA KIM, P.T.

Physical Therapist License No. PT 32231

Respondent.

Case No. 1D-2007-65113

OAH No. 2010041195

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 16, 2011, in San Diego, California.

Samuel K. Hammond, Deputy Attorney General, Department of Justice, State of California, represented Complainant, Steven K. Hartzell, Executive Director, Physical Therapy Board, Department of Consumer Affairs, State of California.

Ann C. Schneider, Attorney at Law, represented Respondent, Hana Kim, P.T., who was present throughout the administrative hearing.

The matter was submitted on February 16, 2011.

PRELIMINARY STATEMENT

On October 3, 2005, the Physical Therapy Board issued Physical Therapy License No. PT 32231 to Hana Kim, P.T.

On April 1, 2009, the Physical Therapy Board conducted an on-site inspection at IndeFree PT & Pain Center. During that inspection, Hana Kim supervised two physical therapy aides who were providing patient-related tasks at the same time.

Ms. Kim's improper supervision of more than one physical therapy aide warrants a disciplinary order that includes a revocation, stayed, 30 days actual suspension from practice, five years probation, and terms and conditions of probation that will preclude Ms. Kim from supervising any physical therapy aide for the first two years she is on probation.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 13, 2010, Complainant, Steven K. Hartzell, Executive Director, Physical Therapy Board, Department of Consumer Affairs, State of California, signed the Accusation in Case No. 1D-2007-65113, which alleged that Respondent supervised two physical therapy aides who were engaged in patient-related tasks simultaneously in violation of Business and Professions Code section 2630 (first cause for discipline) and aided and abetted DH and BB, physical therapist aides, to engage in the unlicensed practice of physical therapy (second and third causes for discipline). The Accusation was served on Respondent, who timely filed a notice of defense. The matter was set for hearing.

2. On February 16, 2011, the administrative record was opened; jurisdictional documents were presented; the accusation was amended without objection; opening statements were waived; sworn testimony was given; documentary evidence was received; closing arguments were given; the record was closed; and the matter was submitted.

Respondent's Licensed Status

3. On October 3, 2005, the Physical Therapy Board issued License No. PT 32231 to Respondent, Hana Kim, P.T. Ms. Kim's license was current at all times relevant to this proceeding. Ms. Kim's expires on January 31, 2013, unless suspended or revoked.

There is no history of the Physical Therapy Board having imposed any license discipline against Respondent's license.

Hana Kim, P.T.

4. Hana Kim graduated from Pacific Union College, Angwin, California, in June 2001. Ms. Kim graduated from Loma Linda University, Loma Linda, California, in June 2005 with a master's degree in Physical Therapy.

Ms. Kim had intern experience at the Redlands Community Hospital as an in-patient physical therapist from June to September 2004, at a Kaiser Permanente clinic in Fontana, California, as a out-patient physical therapist from December 2004 to March 2005, and with the California Children's Services, where she worked as a physical therapist in the rehabilitation department from March to June 2005.

From October 2005 through December 2005, Ms. Kim was employed as a staff physical therapist at STAR Physical Therapy in Murrieta, California (which later became known IndeFree PT & Pain Clinic). She has been employed as a senior physical therapist at IndeFree PT & Pain Center since January 2009.

5. Ms. Kim is married to James Ko, M.P.T., who founded and owns IndeFree Corp., an entity which owns and operates physical therapy clinics and provides courses and

training in marketing, advertising, billing, and related services for physical therapy operations.

The April 1, 2009, Inspection

6. On April 1, 2009, Investigator Elsa Alexander and James Dagostino, D.P.T., P.T., conducted the on-site inspection at the IndeFree facility located at 41539 Kalmia Street, Suite 119, Murrieta, California, on behalf of the Physical Therapy Board. The inspection began at approximately 10:00 a.m.

Inspector Alexander and Dr. Dagostino introduced themselves to Ms. Kim, the senior physical therapist at IndeFree, when they arrived. Ms. Kim said that James Ko, P.T., owned IndeFree, and that she had worked at the facility since October 2005. Ms. Kim stated that IndeFree had five employees: herself; DH, a physical therapy aide; BB, a physical therapy aide; LR, a receptionist; and RM, an administrative assistant/billing specialist. Ms. Kim said Mr. Ko did not work at the clinic on a regular basis, but was on call and saw patients at the clinic on an as-needed basis.

When asked why she was the only physical therapist on site, Ms. Kim said that IndeFree just lost another physical therapist, CR, and that IndeFree was seeking a replacement. Ms. Kim told Investigator Alexander and Dr. Dagostino that she trained and supervised DH and BB, and that she conducted their peer reviews. Ms. Kim stated that IndeFree had regular meetings and trainings for its employees.

During the on-site inspection, Investigator Alexander interviewed BB, DH, LR, and RM. Dr. Dagostino was present during those interviews. Dr. Dagostino also reviewed 20 patient charts.

Observations During the On-Site Inspection

7. During his visit at IndeFree, Dr. Dagostino periodically observed BB and DH providing direct patient-related tasks. In the first hour and a half of the on-site inspection, he saw DH and BB provide physical therapy services to all of the patients who were present at the clinic. Ms. Kim did not provide any direct services to any patient during the first hour and a half; around 11:30 a.m., Ms. Kim excused herself to provide direct physical therapy treatment to a patient. At that time, seven patients were present in the clinic; six were being treated by DH and BB; the remaining patient was being treated by Ms. Kim.

Summary of the Interviews During the On-Site Inspection

8. Ms. Kim stated she was the only physical therapist employed at the IndeFree clinic at the time; that another licensed physical therapist was briefly employed at the clinic, but that physical therapist had resigned; that BB and DH were the physical therapy aides who provided physical therapy treatment under her supervision. Ms. Kim stated that she conducted the patient intake, obtained a patient history, performed the initial evaluation, and developed a treatment plan. Ms. Kim said that she assigned patients to the physical therapy

aides for treatment when that was indicated and that the physical therapy aides assisted her in the delivery of treatment for several patient visits before a reevaluation. Ms. Kim said that she was responsible for providing the patient re-evaluation and for making any changes to the treatment plan. She said that while BB and DH provided treatment to most patients, she provided direct treatment to patients requiring advanced techniques or whose condition was more complicated; and that IndeFree wanted to hire another physical therapist.

In a telephone interview occurring on August 19, 2009, Ms. Kim stated that DH did not supervise other physical therapy aides on patient care issues. Ms. Kim stated that in addition to patient-related tasks, DH was responsible for keeping the clinic area clean and making certain that supplies were stocked.

9. BB stated that Ms. Kim hired her in October 2008 and that Ms. Kim was her clinical supervisor; that Ms. Kim performed periodic competency reviews; that BB provided patients with myofascial release and manual therapy mobilization and exercise treatments and that she did so following her review of the patient treatment plan; that some patients to whom she provided treatment were not treated directly by Ms. Kim; that approximately 40 to 50 patients were seen daily at the IndeFree clinic; that she filed an inquiry with the Physical Therapy Board on March 31, 2009, requesting information concerning the propriety of one physical therapist supervising two physical therapy aides; and that the other physical therapy aide at IndeFree, DH, sometimes supervised and assisted her in providing treatment.

10. DH stated that James Ko hired him in June 2003; that DH was the senior clinical assistant; that Mr. Ko trained him; that DH provided exercise and soft tissue mobilization treatments (which he referred to as massage); that Ms. Kim saw each patient on each clinic visit, but did not always provide direct treatment to each patient on each visit; that DH assisted BB by showing her how to perform certain techniques and he watched her provide treatment to patients; that he referred patients with problems to Ms. Kim for evaluation; and that he saw about 20 patients per day.

Dr. Dagostino's Initial Conclusions

11. Based on his percipient observations on April 1, 2009, Dr. Dagostino believed that Ms. Kim was supervising two physical therapy aides who were providing patient-related tasks at the same time, which he believed to be an obvious violation, and that the two physical therapy aides "may be inappropriately providing physical therapy."

Ms. Kim's August 11, 2009, Declaration

12. Ms. Kim submitted a declaration to the Physical Therapy Board dated August 11, 2009, which stated:

I, Hanna Kim, state in regards to aide & PT ratio, there has been no violation. The law vaguely states that PT are to supervise 1 (one) aide with "patient related" tasks. Non-patient related tasks are observation, supervising

exercises, clerical, review/education of patient rules, etc. During the time of my working in the office, there was only one aide that performed patient related tasks, and if there was someone else, that aide was responsible for non-patient related tasks. At all times the aid was under direct supervision of myself, direct communication and direct line of watch of myself. (Original emphasis.)

The Aides' Testimony

13. BB had no experience as a physical therapy aide when IndeFree hired her as a physical therapy aide in September 30, 2008. Ms. Kim provided BB with training, which included observation and working with two other physical therapy aides. BB began working independently with patients on October 6, 2008. She continued working at IndeFree as a physical therapy aide until February 2010, when she left IndeFree on maternity leave. She has not returned to work at IndeFree since.

On a typical workday, BB provided physical therapy treatment to 10 patients in the morning and to 10 patients in the afternoon. Patients were scheduled at 20 minute intervals. DH, another physical therapy aide employed by IndeFree, worked alongside BB daily while BB was employed at IndeFree.

On a patient's first visit with BB, Ms. Kim conducted the initial evaluation and established the treatment plan. BB was provided with the patient chart. BB delivered the treatment outlined in the treatment plan. The patient was seen and reevaluated by Ms. Kim after five or six therapy sessions. BB never had any problems reading the chart. If she had questions about a particular technique, she asked DH for advice. DH was always helpful. BB provided treatments including soft tissue and joint mobilization, instruction in home exercise programs, and cold laser treatment. BB believed that massage and exercise were physical therapy treatments. The terms "patient-related tasks" and "non-patient-related tasks" were never used at IndeFree.

At some point during her employment, BB became concerned that it might be improper for one physical therapist to supervise more than one physical therapy aide. BB filed an inquiry with the Physical Therapy Board. BB told Ms. Kim of her belief that a provision of the Business and Professions Code stated that a physical therapist was entitled to provide continuous and immediate supervision of no more than one aide. Ms. Kim told BB

that this was not actually the law, and she recommended that BB contact Mr. Ko.¹

14. DH has worked for IndeFree as a physical therapy aide for eight years. He worked with BB for several years when she was employed by IndeFree. DH said he "supervised" BB to the extent that he reiterated what Ms. Kim told BB to do, and he assisted BB by offering suggestions that might help BB provide better treatment.

DH testified that he and BB each saw about 20 patients per day. DH and BB did not evaluate patients, assess patient needs, create treatment plans, or provide training related to physical therapy modalities or techniques. Ms. Kim supervised their work. There were regularly scheduled staff meetings. DH believed that massage was a physical therapy modality.

The Expert Testimony

15. Complainant's expert, James Dagostino, received a bachelor's degree in Physical Education from Springfield College in Springfield, Missouri, in 1969. He obtained a certificate of completion in Physical Therapy from California State University, Long Beach, in 1974 following a two-year training program. He received a doctorate in Physical Therapy from the University of Southern California in 1996. Dr. Dagostino's practice as a physical therapist has been in California.

Dr. Dagostino was a staff physical therapist at Sharp Rehabilitation Center, San Diego, from 1974 through 1976. He was a supervisor of outpatient rehabilitation at Bay General Community Hospital in Chula Vista from 1976 through 1977. He was a physical therapy supervisor at North County Health Center in Oceanside from 1977 through 1982. He opened a private practice known as Dagostino & Howard Physical Therapy in Oceanside, where he practiced from 1982 through 1983. He incorporated and opened a business known as Dagostino Physical Therapy, Inc., where he practiced in Oceanside from 1983 through

¹ In an email sent on April 2, 2009, BB asked Mr. Ko for clarification of this issue. In an email dated April 3, 2009, Mr. Ko responded, stating, in part:

Laws and statutes surrounding the practice of physical therapy in the state of California are very complex . . . IndeFree employs 1 aide to act as a receptionist, 1 Aide to act as a billing and administrative clerk, 1 aide to act as a clinical assistant performing "NON-patient related tasks", 1 aide to act as a clinical assistant performing "patient related tasks." Several of our aides are cross-trained to perform 'patient related tasks' as needed but are never allowed to be performed at the same time . . . The PT is always on site, available, accessible and within audible and/or visual distance from all aides at all times. Never is the safety of the patient or the quality of care compromised at any time.

2009. He was affiliated with Twin Oaks Physical Therapy, Inc. in San Marcos from 2002 through 2009. He is currently an employee of Gaspar Physical Therapy, which took over Dr. Dagostino's Oceanside practice in 2009.

Dr. Dagostino served as a Clinical Professor for the Department of Physical Therapy & Biokinesiology at the University of Southern California from 1996-2007. He has published several articles and has engaged in several research projects. He is a member of numerous professional organizations and societies. He serves as a consultant to the Physical Therapy Board.

16. Dr. Dagostino personally observed those matters described in Factual Findings 6 and 7, and he was present at the interviews described in Factual Findings 8 through 10.

Based on his observations, Dr. Dagostino concluded that the two aides at the IndeFree clinic provided direct patient-related tasks and that Ms. Kim was the only licensed physical therapist present at IndeFree at the time to provide supervision. In summary, Dr. Dagostino testified that a "patient-related task" was a physical therapy service rendered directly to a patient by an aide and that a "non-patient-related task" involved mere observation of a patient, transporting a patient, physically supporting a patient during gait training or movement, or performing housekeeping duties, clerical duties, or similar functions. He described "patient-related tasks" as the business of treating the patient.

Dr. Dagostino acknowledged that a licensed physical therapist may direct an aide to perform specific patient-related tasks, but he cautioned that the physical therapist cannot supervise more than one aide providing patient-related tasks at a time. He testified that active supervision requires more than mere observation of an aide's activities.

17. Dr. Dagostino observed DH and BB providing direct patient-related tasks at the same time on April 1, 2009. Nothing that Dr. Dagostino observed or was told during the inspection suggested to him that this was an out of the ordinary occurrence at IndeFree. During her April 1, 2009, interview, Ms. Kim never said that one physical therapy aide was providing a patient-related task and the other was providing non-patient-related tasks.

18. Dr. Dagostino believed that Ms. Kim may have aided and abetted DH and BB in the unlicensed practice of physical therapy. Dr. Dagostino reached this opinion based on the interviews of DH and BB.

19. On cross-examination Dr. Dagostino conceded that he did not consult any legal source or any other authority regarding the definition of the phrase "aiding and abetting." He conceded that neither the statute nor the regulations provided specific examples of what services constituted patient-related tasks or treatment. Dr. Dagostino testified that the standard of practice was more stringent than what the law appeared to require in the area of supervision. He conceded that the standard of practice did not define the term "patient-related task."

20. James Ko, the owner of IndeFree, provided several opinions in this matter. Mr. Ko completed a two year pre-physical therapy program at Riverside Community College and La Sierra University in June 1992. He obtained a master's degree in Physical Therapy from Loma Linda University in June 1996. His resume lists his experience as founding IndeFree Association, a national consulting firm, founding the CAIR system for Clinical Excellence, and contributing to a text. His employment history includes owning Revive Centers Physical Therapy from February 1997 through April 2001, owning Spine Therapy and Rehab from April 2001 through October 2006, and owning STAR Rehab Corporation from January 2005 to the present. Mr. Ko's resume sets forth his experience as a consultant to several organizations including the Walnut Industrial Medical Center, Brea Community Hospital, Viewsonic Corporation, and Circuit City.

Mr. Ko launched IndeFree in 1997. He described that venture as being a practice, management, marketing and consulting firm for physical therapists. IndeFree offers four-day courses that assist physical therapists in the development of advanced business skills in the area of marketing, billing, practice management, the development of cash-pay programs, and leadership, including the physical therapist's relationship with insurance companies. Mr. Ko testified that he lectures upon the use of physical therapy aides during these offerings.

Mr. Ko is not an attorney. He had no personal knowledge about the development of the physical therapist to aide supervision ratio. Mr. Ko believed that the use of a physical therapy aide makes the practice of physical therapy more profitable to the owner of a physical therapy clinic. He knew about the applicable statutes and regulations, which he referred to in his testimony as "guidelines," because he had used those sources to develop IndeFree's protocols.

Mr. Ko testified that he developed protocols related to the use of physical therapy aides, but he did not bring a copy of those protocols to the hearing. According to Mr. Ko, a licensed physical therapist can supervise no more than one physical therapy aide who is engaged in patient-related tasks, but there is no prohibition against that licensed physical therapist supervising other physical therapy aides who are not engaged in patient-related tasks at the same time. Mr. Ko testified that if a massage was given that was not part of a physical therapist's treatment plan, then that massage would not involve a patient-related task. Mr. Ko implied that since IndeFree offered and provided many cash-pay services that were not included in a physical therapist's formal treatment plan or not covered by insurance – such as laser treatment, post-rehabilitation fitness training, sports performance training, massage, and pulsation therapy – it was possible that one physical therapy aide could be providing direct patient-related tasks while another physical therapy aide was providing non-patient-related task that might appear to be a patient-related task.

On cross-examination, Mr. Ko suggested that how a particular task was billed determined whether that task was patient-related or non-patient-related. He conceded that manual therapy, therapeutic exercise, traction, TENS, the application of heat and ice, ultrasound, manual traction, and hydrotherapy were all patient-related tasks that required supervision if they were performed by a physical therapy aide as part of a treatment plan.

Mr. Ko testified that he visited the IndeFree clinic in Murrieta every six months or so, and that he never observed two therapists providing patient-related tasks at the same time. He believed that BB and DH could each deliver patient-related tasks outlined in a patient treatment plan to at least 15 patients per day without doing so simultaneously.

Mr. Ko's testimony did not make Dr. Dagostino's testimony that he observed BB and DH providing patient-related services simultaneously either unclear or less than convincing.

Respondent's Testimony

21. Ms. Kim provided information concerning her background, education, training, and experience as a physical therapist. According to Ms. Kim, her formal education "touched briefly" on supervision requirements for a physical therapy aide.

22. When Ms. Kim began working for Mr. Ko, there were two licensed physical therapists (including herself) and two physical therapy aides at the Murrieta clinic. Each physical therapist was assigned a physical therapy aide. Because of the staffing ratio and assignments, there were no supervision issues.

Ms. Kim described in detail how she conducts an initial patient interview, how she obtains a history, how she conducts a physical examination, and the steps she follows in evaluating the patient before she establishes a formal treatment plan. The process requires her to obtain objective and subjective data. The initial evaluation takes place in a private room, but the door is always open so she can hear and see what others are doing within the IndeFree facility. Ms. Kim provides the patient with a "patient rule sheet" which sets forth goals and other matters. She completes a treatment plan, which sets forth the frequency of treatment and the treatment modalities that are to be provided.

Ms. Kim testified that certain treatment modalities can be provided only by a licensed physical therapist, and that the patient's chart sets forth such a limitation. After the initial evaluation, Ms. Kim supervises the physical therapy aides in the provision of treatment. She is available to the physical therapy aides throughout the day in their interactions with patients and answers questions and provides support as needed.

Sometime between January and April 2009, Ms. Kim became the only licensed physical therapist at the IndeFree clinic. She testified that she told the two physical therapy aides at the clinic that only one of them was permitted to provide patient-related tasks at a time. Ms. Kim did not consider elective services, i.e., services not described in the patient's chart, to involve patient-related tasks. Ms. Kim described the three levels of treatment offered as being comprehensive, medium, and basic. Ms. Kim testified that she provided hands-on care to those patients who required comprehensive treatment. Ms. Kim testified that a physical therapy aide provided care to patients with intermediate needs, but she provided very active supervision. Ms. Kim testified that physical therapy aides usually provide all of the basic treatment and that she was always present to observe and to answer any questions the physical therapist aides might have. Ms. Kim reevaluated patients every

three to six visits. She did not permit the physical therapy aides to conduct evaluations, to create treatment plans, or to conduct reevaluations.

With regard to the April 1, 2009, inspection, Ms. Kim recalled that she was interviewed in a private room at the facility, that the door was open, and that she could observe what was going on in the facility. She could not recall what DH and BB were doing specifically, but she assumed that only one of them was providing direct patient-related tasks at a time. Ms. Kim thought that she was complying with the statutory and regulatory requirements related to supervision, although she conceded that her opinion might be incorrect.

Ms. Kim testified that in the aftermath of the April 1, 2009, inspection new procedures were instituted at the IndeFree clinic wherein only one physical therapy aide provides patient related tasks at a time for a morning or afternoon session, so that it is not possible for two aides to be provide direct patient-related services simultaneously.

Ms. Kim testified that her physical therapy license is very important to her and that she had no intent to break the law. She testified that she was willing to accept any guidance and direction offered by the Physical Therapy Board.

On cross-examination, Ms. Kim admitted that on August 19, 2009, about four months after the on-site inspection, she signed a declaration that stated that the "law vaguely states that PT are to supervise 1 (one) aide with 'patient related' tasks. . . ." Ms. Kim did not contact the Physical Therapy Board or an attorney to find out what was and what was not a patient-related task in the interim. This lack of initiative was concerning. Later, Ms. Kim admitted that between October 2008 and April 2009, when she was the only licensed physical therapist at the IndeFree premises, she specifically told DH and BB what was and what was not a patient-related task.² Ms. Kim was present when DH testified that he counseled BB on occasion and that showed her how to perform various therapeutic techniques. Ms. Kim claimed that this testimony came as a surprise because she was unaware that this ever occurred. Ms. Kim's asserted lack of awareness provides support for the proposition that her level of supervision was inadequate, i.e., she did not know what the physical therapy aides were saying to one another when they were with patients and she did not always observe what they were actually doing.

Ms. Kim is a very bright and very personable individual. Her testimony was not compelling, and it did not make Dr. Dagostino's testimony concerning his observations on April 1, 2009, unclear or less than convincing.

Disciplinary Arguments

23. Counsel argued that Ms. Kim was prohibited from supervising more than one physical therapy aide at a time, that Ms. Kim's purported distinction between aides engaged in patient-related and non-patient-related tasks was unreliable and untrustworthy, and that

² During their testimony, BB and DH did not recall that Ms. Kim ever told them this.

Ms. Kim aided and abetted BB and DH in the unlicensed practice of physical therapy because each of those aides made decisions that could only be made by a physical therapist. Counsel argued that Dr. Dagostino's testimony that he observed the two physical therapy aides performing patient-related tasks at the same time on April 1, 2009, was credible and was consistent with BB's testimony. Counsel argued that DH's testimony that he supervised, counseled, and corrected BB established that Ms. Kim aided and abetted the unlicensed practice of physical therapy. Counsel argued that Ms. Kim provided no evidence in mitigation and did not admit any wrongdoing. Counsel argued that the appropriate measure of discipline was the outright revocation of Ms. Kim's license.

24. Respondent argued that Dr. Dagostino's testimony was, by itself, insufficient to establish by clear and convincing evidence that DH and BB engaged in patient-related tasks simultaneously on April 1, 2009, and that his opinion was based on assumptions. Respondent argued that the statute and regulation at issue were not crystal clear, and that neither the statute nor the regulation defined in a meaningful way what constituted a patient-related task. Respondent argued that Ms. Kim was always at the clinic and that her supervision of the physical therapy aides was continuous and immediate. Respondent argued that Ms. Kim and the clinic staff were always cooperative with the Physical Therapy Board and that any deficiencies in Ms. Kim's April 1, 2009, statement was the result of her being harried and having to focus on the two specific consumer complaints.³ Respondent argued that no patient harm was established and that no violation of the Physical Therapy Practice Act was established, but even if a violation was established, the violation was limited to the supervision that was provided on April 1, 2009. Respondent recommended that the accusation be dismissed, but if cause for discipline was found to exist, then a public reprimand was appropriate.

Disciplinary Guidelines

25. The Physical Therapy Board published disciplinary guidelines. The guidelines state in part:

The purpose of licensure of physical therapists and physical therapist assistants in the State of California is to protect the public's health, safety and welfare from the incompetent and unprofessional practice of physical therapy. The challenges that these guidelines address are to provide public protection and to enable a licensee to practice his/her profession in a controlled environment, if possible. In addition to protecting the public and, where not inconsistent, rehabilitating a licensee, the Physical Therapy Board finds imposing the discipline set forth in the guidelines will promote uniformity, certainty, fairness, and deterrence, to further public protection.

³ See Finding 29.

The Board has some basic expectations when an Administrative Law Judge determines that the allegations are true and that a cause for discipline exists. These include:

- 1) If at the time of hearing, the Administrative Law Judge finds that Respondent, for any reason, is not capable of safe practice, the Board expects the outright revocation of the license. This is particularly true in cases of patient sexual abuse. In less egregious cases, a stayed revocation with suspension and probation, pursuant to the guidelines contained in this manual, would be expected.
- 2) The Board expects that revocation is normally the appropriate order in cases where Respondent is in default.
- 3) When probation is granted, the inclusion of a stayed revocation order is essential to ensure compliance with terms of probation.
- 4) The Board expects that when the revocation of a license is stayed, a suspension of the license shall be considered. A suspension, when imposed, should not be for less than indicated in the guidelines. Community service may be substituted in whole or in part for the suspension.
- 5) The Board expects that the decision will include an order for cost recovery.

The Board recognizes that a rare individual case may necessitate a departure from these guidelines for disciplinary order. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure. However, in such a rare case, the mitigating circumstances must be detailed in the Findings of Fact, which is in every Proposed Decision

The guidelines discuss the circumstances that support the issuance of a public reproof. In that regard, the guidelines state:

The Board is authorized by Section 495 and 2660.3 of the Business and Professions Code to publicly reprove or reprimand a physical therapist or physical therapist assistant for a violation of the Physical Therapy Practice Act. The issuance of a public reproof as part of a disciplinary order may be considered when the following circumstances exist:

1. The offense is an isolated incident.
2. Sufficient time has elapsed since the offense without further violations that would indicate that a recurrence is unlikely.
3. The Respondent has admitted to the offense.
4. The Respondent has indicated remorse.
5. There has been no prior discipline for a similar violation.
6. In the case of an offense related to substance abuse, active participation in a recovery program has been documented for at least one year without a relapse.

26. For a violation of Business and Professions Code section 2630 – the improper supervision of a physical therapist aide – the maximum sanction is an outright revocation, and the minimum sanction is a revocation, stayed, with a 30-day actual suspension and five years probation. In addition to standard terms and conditions of probation, optional conditions of probation include a supervised practice with supervision, a requirement that the practice be conducted in the presence of another physical therapist, having a practice monitor, and a prohibition preventing the supervising others.

Conclusions

27. General Matters – Physical Therapy and the Need for Licensure: Persons who seek services from a licensed physical therapist⁴ do so as a result of a referral from another health care provider or self-referral. These persons usually have a physical or mental condition that requires rehabilitation or physical or other corrective treatment. In addition, some persons seek the services of a licensed physical therapist to maintain and promote their health and well being through physical therapy interventions.

A licensed physical therapist may use physical, chemical, and other properties of heat, light, water, electricity, sound, and massage, as well as active, passive, and resistive exercise, in the treatment of persons who seek professional services from a physical therapist. A licensed physical therapist is specifically authorized to provide these persons with a physical therapy evaluation, treatment planning, instruction, consultative services, and physical therapy.

An applicant for a physical therapy license must be qualified to hold a license and must establish a level of education, training, and practical experience before licensure. The

⁴ Business and Professions Code section 2620 defines the art and science of “physical therapy.”

applicant must pass a competency examination. Persons seeking physical therapy may be physically vulnerable. (Bus. & Prof. Code, 2634-2653.) Persons seeking physical therapy have good reason to believe through the licensing of physical therapists that they will be provided with safe and effective physical therapy by a trained, competent individual.

Regulation of the Practice: The practice of physical therapy is governed by the Physical Therapy Act. Under the Act, the Physical Therapy Board enforces and administers the Act (Bus. & Prof. Code, § 2602), including the adoption of such regulations that may be necessary to effectuate the Act (Bus. & Prof. Code, § 2615) and the prosecution of disciplinary actions against licensees on specified grounds (Bus. & Prof. Code, § 2660.) Protection of the public is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Bus. & Prof. Code, § 2602.1.)

The Use of Physical Therapy Aides: Under the Act, a licensed physical therapist "may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy." A "patient-related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient-related tasks. A "non-patient-related task" means a task related to observation of the patient, transport of the patient, physical support of the patient only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. By statute, the physical therapy aide must always be under the orders, direction, and immediate supervision of the physical therapist. A physical therapy aide is prohibited from independently performing physical therapy or any physical therapy procedure. (Bus. & Prof. Code, § 2630.)

Under title 16, California Code of Regulations, section 1339:

A physical therapy aide is an unlicensed person who assists a physical therapist and may be utilized by a physical therapist in his or her practice by performing nonpatient related tasks, or by performing patient related tasks.

(a) As used in these regulations:

(1) A "patient related task" means a physical therapy service rendered directly to the patient by an aide, excluding nonpatient related tasks as defined below.

(2) A "nonpatient related task" means a task related to observation of the patient, transport of patients, physical support only during gait or transfer training, housekeeping duties, clerical duties and similar functions.

(b) "Under the orders, direction and immediate supervision" means:

(1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. The evaluation shall be documented in the patient/s record.

(2) The physical therapist shall formulate and record in the patient/s record a treatment program based upon the evaluation and any other information available to the physical therapist, and shall determine those patient related tasks which may be assigned to an aide. The patient/s record shall reflect those patient related tasks that were rendered by the aide, including the signature of the aide who performed those tasks.

(3) The physical therapist shall assign only those patient related tasks that can be safely and effectively performed by the aide. The supervising physical therapist shall be responsible at all times for the conduct of the aide while he or she is on duty.

(4) The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as and in immediate proximity to the location where the aide is performing patient related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient related tasks are provided a patient by an aide the supervising physical therapist shall at some point during the treatment day provide direct service to the patient as treatment for the patient/s condition or to further evaluate and monitor the patient/s progress, and so document in the patient/s record.

(5) The physical therapist shall perform periodic re-evaluation of the patient as necessary and make adjustments in the patient/s treatment program. The re-evaluation shall be documented in the patient/s record.

(6) The supervising physical therapist shall countersign with their first initial and last name, and date all entries in the patient/s record, on the same day as patient related tasks were provided by the aide.

It is obvious that physical therapy aides help make therapy sessions productive. There is no problem with a physical therapy aide performing a non-patient-related task, which involves performing clerical tasks, ordering depleted supplies, answering the phone, filling out insurance forms and other paperwork, keeping treatment areas clean and organized, preparing treatment areas for each patient's therapy, providing assistance to patients moving to or from treatment areas, pushing patients in a wheelchair, providing patients with a shoulder to lean on, and observing patients.

And physical therapy aides are permitted to do more. So long as there is continuous and immediate supervision over no more than one physical therapy aide who is rendering a patient-related task and so long as that physical therapy aide performs only tasks that the physical therapist previously determined were safe and effective for that aide to perform, a physical therapy aide may render some form of treatment directly to the patient. The task provided must be specifically assigned to a physical therapy aide in the patient's treatment plan. Paperwork must be maintained to verify what task was rendered by the physical therapy aide, the physical therapy aide's identity, and that the licensed physical therapist reviewed the service provided by the physical therapy aide on the same day it was rendered.

The reason for close supervision of and the limitation upon the services a physical therapy aide can render is obvious – an unsupervised or incompetent physical therapy aide can make the treatment unsafe to the patient or make render the treatment ineffective. The patient's safety and the effectiveness of the treatment – not the profitability of the physical therapy enterprise – are the keystones to the provision of services of a physical therapy aide. Neither the statute nor the regulation makes reference to a patient-related task on the basis that the service rendered by the physical therapy aide is being paid for by insurance.

28. Dr. Dagostino's percipient observations during his visit at the IndeFree clinic the morning of April 1, 2009, constituted clear and convincing evidence that Ms. Kim supervised DH and BB that morning when DH and BB provided direct patient-related tasks simultaneously. Dr. Dagostino had practiced as a licensed physical therapist in California for more than 30 years, he was very knowledgeable about physical therapy techniques, interventions, and modalities, and he certainly knew what did and did not constitute patient-related tasks. BB's testimony concerning the practice of the physical therapy aides at the IndeFree clinic supported Dr. Dagostino's conclusion in this regard, as did the volume of patients that were being seen there on a daily basis. If, as Respondent claimed, BB and DH were not providing patient-related tasks simultaneously the morning of April 1, 2009, then Respondent could and should have produced required patient treatment records for that morning to show that patient-related tasks were not being rendered by DH and BB at the same time. It is significant that Respondent offered no documentary evidence to support this theory of defense.

Dr. Dagostino's testimony did not, however, establish by clear and convincing evidence that Ms. Kim improperly supervised physical therapy aides on any other occasion. DH and BB testified that they were unaware of what was and what was not a patient-related task, they usually worked alongside one another throughout the day, and they rendered services to approximately 30 or more patients a day; this evidence created a strong suspicion

that DH and BB provided patient-related tasks simultaneously at some point during every working day when IndeFree employed only one physical therapist, but no factual finding can be reached in that regard based on the standard of proof and the evidence presented.

The collegial interaction between DH and BB did not establish that either one of them practiced physical therapy without a license, or that Ms. Kim aided or abetted either of them in the unlawful practice of physical therapy. Dr. Dagostino's testimony that Ms. Kim "may" have aided and abetted DH and BB further underscores that the evidence of such a violation was not clear and convincing.

29. Ms. Kim's misconduct was intertwined with her husband's ownership of the IndeFree clinic, her confidence that what her husband told her was lawful and appropriate, the need for the clinic to remain busy and profitable, and the difficulty in finding another licensed physical therapist to fill the vacancy at IndeFree. While there are some ambiguities in the statute and regulation at issue, those uncertainties did not make Ms. Kim's supervision of two physical therapy aides simultaneously engaged in patient-related tasks the morning of April 1, 2009, lawful. Ms. Kim's testimony concerning the written policy and procedures that IndeFree had in place that ensured that two physical therapy aides never provided direct patient-related services were not produced.

Protection of the public requires that some measure of discipline be imposed because supervising two physical therapy aides at one time poses a risk of injury to patients and may result in the delivery of costly ineffective treatment.

The Appropriate Measure of Discipline

30. Issuance of no more than a public reprimand is not warranted. While no prior discipline has been imposed against Ms. Kim's license and while there is no evidence that anyone at the IndeFree clinic was cited or charged with a similar violation, Ms. Kim did not admit any wrongdoing or express any remorse.

Issuance of an outright revocation is not indicated. Ms. Kim provided continuous and immediate supervision over DH and BB, although it was not as active as it could have been. Ms. Kim did not permit DH or BB to engage in the unlicensed practice of physical therapy. There was no suggestion that Ms. Kim's supervision of more than one physical therapy aide resulted in any patient harm. Imposition of an outright revocation would be disproportionate to the offense that was established, and would not serve to protect the public.

Issuance of a disciplinary order consistent with the minimum sanction recommended under the Physical Therapy Board's disciplinary guidelines is appropriate under the circumstances. Suspending Ms. Kim's license for a period of 30 days will get her attention. Requiring Ms. Kim to practice in the presence of another physical therapist and requiring Ms. Kim to have a practice monitor will assure the public that her practice is in accordance with the Physical Therapy Practice Act. Prohibiting Ms. Kim from supervising physical therapy aides for the first two years of her probation will also protect the public. Requiring more by way of special terms of probation would not serve to protect the public.

Costs of Investigation and Prosecution

31. This disciplinary matter was initiated as a result of two consumer complaints, neither of which involved the improper supervision of physical therapy aides. As a result of the Board's on-site investigation of those consumer complaints, observations were made that resulted in the filing of the Accusation in this matter. Thus, the investigation that resulted in the filing of this matter included an on-site investigation by the Board's investigator and expert consultant and the preparation of reports related to the observations and interviews that were conducted.

The Board's Executive Officer certified that 10.25 hours of investigative time was spent in the investigation of this matter, and that the investigator charged \$159 per hour. The time spent and the hourly rate appears reasonable.

The Board's Executive Officer certified that the expert spent 12 hours in the investigation and in the preparation of his report, and the expert billed his services at the rate of \$75 per hour. In addition, the expert billed 104 miles at \$0.51 cents per mile. The expert's time, rate, and expenses were reasonable.

The Board's reasonable cost of investigation totaled \$2,582.79.

32. The deputy who prosecuted this matter presented a declaration. The deputy asserted that 58 hours was spent in necessary legal tasks including pleading preparation (eight hours for the preparation of a seven page accusation), 24 hours for trial and witness preparation, 13 hours in preparation for a settlement conference and in the settlement conference, and other time spent in "contract/document preparation" and other tasks. Legal services were billed at the rate of \$170 per hour, which is a reasonable hourly fee. The case took one and a half days to try. The case was somewhat complicated factually and legally. Complainant called BB, DH, the investigator, and the expert witness. Complainant did not provide a written memorandum of points and authorities. It should not have taken more than 40 hours to prosecute this matter.

The Board's reasonable cost of enforcement amounted to \$6,800.

33. Complainant requested an outright revocation be issued, which was an excessive disciplinary recommendation under the circumstances. Respondent was forced to defend to preserve her right to retain her practice, although her suggestion that a public reprimand be issued was not reasonable under the circumstances. Complainant proved the first cause for discipline, but not the second and third causes for discipline.

Under the circumstances, a total award of \$5,000 in costs is reasonable.

LEGAL CONCLUSIONS

The Standard of Proof

1. The standard of proof in an administrative action seeking to suspend or revoke a professional's license is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Statutory Authority

2. Business and Professions Code section 2630 provides in part:

A physical therapist . . . may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. "Patient-related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient-related tasks. "Non-patient-related task" means a task related to observation of the patient, transport of the patient, physical support only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be under the orders, direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy procedure. The board shall adopt regulations that set forth the standards and requirements for the orders, direction, and immediate supervision of an aide by a physical therapist. The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient-related tasks are provided to a patient by an aide, the supervising physical therapist shall, at some point during the treatment day, provide direct service to the patient as treatment for the patient's condition, or to further evaluate and monitor the patient's progress, and shall correspondingly document the patient's record.

The administration of massage, external baths, or normal exercise not a part of a physical therapy treatment shall not be prohibited by this section.

3. Business and Professions Code section 2660 provides in part:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(h) . . . violating . . . directly or indirectly . . . any provision or term of this chapter . . .

(i) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(j) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

Regulatory Authority

4. Title 16, California Code of Regulations, section 1399 provides:

A physical therapy aide is an unlicensed person who assists a physical therapist and may be utilized by a physical therapist in his or her practice by performing nonpatient related tasks, or by performing patient related tasks.

(a) As used in these regulations:

(1) A "patient related task" means a physical therapy service rendered directly to the patient by an aide, excluding nonpatient related tasks as defined below.

(2) A "nonpatient related task" means a task related to observation of the patient, transport of patients, physical support only during gait or transfer training,

housekeeping duties, clerical duties and similar functions.

(b) "Under the orders, direction and immediate supervision" means:

(1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. The evaluation shall be documented in the patient's record.

(2) The physical therapist shall formulate and record in the patient's record a treatment program based upon the evaluation and any other information available to the physical therapist, and shall determine those patient related tasks which may be assigned to an aide. The patient's record shall reflect those patient related tasks that were rendered by the aide, including the signature of the aide who performed those tasks.

(3) The physical therapist shall assign only those patient related tasks that can be safely and effectively performed by the aide. The supervising physical therapist shall be responsible at all times for the conduct of the aide while he or she is on duty.

(4) The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as and in immediate proximity to the location where the aide is performing patient related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient related tasks are provided a patient by an aide the supervising physical therapist shall at some point during the treatment day provide direct service to the patient as treatment for the patient's condition or to further evaluate and monitor the patient's progress, and so document in the patient's record.

(5) The physical therapist shall perform periodic re-evaluation of the patient as necessary and make adjustments in the patient's treatment program. The re-evaluation shall be documented in the patient's record.

(6) The supervising physical therapist shall countersign with their first initial and last name, and date all entries

in the patient's record, on the same day as patient related tasks were provided by the aide.

5. Cause does not exist to impose discipline under Business and Professions Code section 2660, subdivision (i) (second cause for discipline) or under Business and Professions Code section 2260, subdivision (j) (third cause for discipline). The clear and convincing evidence did not establish that Respondent, Hana Kim, P.T., aided or abetted BB or DH to engage in the unlicensed practice of physical therapy in any fashion.

6. Cause exists to impose discipline under Business and Professions Code section 2660, subdivision (h), as that provision interacts with Business and Professions Code section 2630 and title 16, California Code of Regulations, section 1399 (first cause for discipline). The clear and convincing evidence established that on the morning of April 1, 2009, Respondent, Hana Kim, P.T., supervised DH and BB when DH and BB were providing direct patient-related tasks simultaneously, in violation of the Physical Therapy Practice Act.

Costs of Investigation and Enforcement

7. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

. . .

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

8. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that a regulation imposing costs⁵ for investigation and enforcement upon a chiropractor

⁵ Title 16, California Code of Regulations, section 317.5

who was found to be in violation of the law did not violate due process. But, the Supreme Court determined that it was incumbent on the State Board of Chiropractic Examiners to exercise its discretion to reduce or eliminate cost awards in a manner that ensured that section 317.5 did not "deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing."

The Supreme Court set forth four factors that the State Board of Chiropractic Examiners was required to consider in deciding whether to reduce or eliminate costs: (1) whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a "subjective" good faith belief in the merits of his position; (3) whether the chiropractor raised a "colorable challenge" to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

Since the regulation related to cost recovery in actions involving licensed chiropractors has substantially the same language and seeks the same kinds of recovery as authorized under Business and Professions Code section 125.3, it is reasonable to extend the reasoning in *Zuckerman* to Business and Professions Code section 7403, subdivision (b).

The Zuckerman criteria were applied in this matter and are set forth in Factual Findings 18 through 20. Thus, an order directing Respondent to pay \$5,000 of the Board's costs of investigation and enforcement in this matter is determined to be reasonable under all the circumstances.

ORDER

Physical Therapy License No. PT 32231 issued to Respondent, Hana Kim, P.T., is revoked; provided, however, that the order of revocation is immediately stayed and Physical Therapy License No. PT 32231 shall be placed on probation for a period of five years on the following terms and conditions of probation.

1. License Suspension

Respondent's license shall be suspended for a period of 30 consecutive calendar days. Respondent shall serve the period of suspension within the first 90 days of effective date of the Decision herein and at the Board's discretion.

2. Cost Recovery

Respondent is ordered to reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board in the amount of \$5,000. Said costs shall be paid within 30 days of the effective date of this Decision. Respondent failure to pay the ordered reimbursement, or to make any other payments in for costs reached upon agreement with the Physical Therapy Board, constitutes a violation of this probationary order. The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility to reimburse the

Board. If Respondent is in default of her responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax Board or the Internal Revenue Service or by any other means of attachment of earned wages legally available to the Board. Respondent's failure to fulfill the cost obligation set forth herein may also result in attachment of Department of Motor Vehicle registrations, license renewals, or both.

3. Obey All Laws

Respondent shall obey all federal, state and local laws, the statutes and regulations governing the practice of physical therapy and she shall remain in full compliance with any court ordered criminal probation. This condition applies to any jurisdiction with authority over Respondent, whether it is inside or outside of California.

Further, Respondent shall, within five days of any arrest, submit to the Board in writing a full and detailed account of such arrest.

4. Compliance with Orders of a Court

Respondent shall be in compliance with any valid order of a court. Being found in contempt of any court order constitutes a violation of probation.

5. Compliance with Criminal Probation and Payment of Restitution

Respondent shall not violate any terms or conditions of criminal probation and she shall comply with any restitution ordered, payments or other orders.

6. Quarterly Reports

Respondent shall submit quarterly reports under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation.

7. Probation Monitoring Program Compliance

Respondent shall comply with the Board's probation monitoring program.

8. Interview with the Board or its Designee

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals.

9. Restriction of Practice – Monitoring

Within thirty (30) days of the effective date of this decision, Respondent shall select a licensed physical therapist to serve as her professional practice monitor during the period of probation and she shall submit the name of the licensed physical therapist selected for approval by the Board or its designee. The professional practice monitor shall be selected

from an established pool of physical therapists licensed to practice in the State of California who are currently serving as trained expert consultants to the Board. If there is no practice monitor available from the pool of physical therapists, Respondent may provide the probation monitor with the name and license number of a physical therapist for approval if deemed appropriate. The professional practice monitor shall not be someone with a conflict of interest in reviewing the licensee's practice. A conflict of interest is one that may interfere with the ability to fairly assess the licensee's practice and provide the probation monitor with a non-biased report. This includes, but is not limited to, a business partner or family member of the licensee.

After the professional practice monitor has been approved by the Board, the professional practice monitor in conference with the Board's probation monitor will establish the schedule upon which clinical visits will be made to Respondent's place of employment to review Respondent's current practice and Respondent's adherence to the terms of probation. The professional practice monitor shall report to the Board's probation monitor on compliance with the terms and conditions of Respondent's probation after each clinical visit. The report shall indicate whether Respondent's practices are within the standards of practice of physical therapy and/or billing, and whether Respondent is practicing physical therapy safely, and/or billing appropriately.

Should the professional practice monitor resign or no longer be available, Respondent shall within 15 days submit for approval by the Board another

10. Restriction of Practice - Temporary Services Agencies

Respondent shall not work for a temporary services agency or registry.

After two years of full compliance of probation, Respondent may request the Board or its designee in writing for the approval to remove this condition of probation entirely or to modify the requirement.

11. Restriction of Practice - Clinical Instructor of Physical Therapy Student Interns or Foreign Educated Physical Therapist License Applicants or Physical Therapy Aides Prohibited.

Respondent shall not supervise any physical therapy student interns, foreign educated physical therapist license applicants or other individuals accumulating hours or experience in a learning capacity in physical therapy during the period of probation. Respondent shall not supervise any physical therapy aides during the period of probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of this probation.

After two years of full compliance of probation, Respondent may request the Board or its designee in writing for the approval to remove this condition of probation entirely or to modify the requirement.

12. Restriction of Practice - Presence of Another Physical Therapist Required

Respondent shall be prohibited from working any shift in which there is no other physical therapist on duty.

After two years of full compliance of probation, Respondent may request the Board or its designee in writing for the approval to remove this condition of probation entirely or to modify the requirement.

13. Notification of Probationer Status to Employers

Respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the Initial Probationary License, Statement of Issues, Accusation and the Decision and Order, or Stipulated Settlement to the employer, and submit written employer confirmation of receipt to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.

14. Notification of Change of Name or Address

Respondent shall notify the Board, in writing, of any and all of name and/or address changes within ten days.

15. Prohibited Use of Aliases

Respondent shall not use aliases and shall be prohibited from using any name which is not her legally-recognized name or based upon a legal change of name.

16. Intermittent Work

If Respondent works less than 192 hours as a physical therapist in the physical therapy profession in a period of three months, those months shall not be counted toward satisfaction of the probationary period. Respondent is required to immediately notify the probation monitor or the designee if she works less than 192 hours in a three-month period.

17. Tolling of Probation

The period of probation shall run only during the time Respondent is practicing or performing physical therapy within California. If, during probation, Respondent does not practice or perform within California, Respondent is required to immediately notify the probation monitor in writing of the date that Respondent is practicing or performing physical therapy out of state, and the date of return, if any. Practicing or performing physical therapy by Respondent in California prior to notification to the Board of Respondent's return will not be credited toward completion of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

18. Violation of Probation

Failure to fully comply with any component of any of the probationary terms and conditions is a violation of probation.

If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

19. Request to Surrender License Due to Retirement, Health or Other Reasons

Following the effective date of this Decision, if Respondent ceases practicing or performing physical therapy due to retirement, health or other reasons or is otherwise unable to satisfy the terms and conditions of probation Respondent may request to surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable; Respondent makes application for the renewal of the tendered license or makes application for a new license.

20. California Law Examination - Written Exam on the Laws and Regulations Governing the Practice or Performance of Physical Therapy

Within 90 Days of the effective date of this decision, Respondent shall take and pass the Board's written examination on the laws and regulations governing the practice of physical therapy in California. If Respondent fails to pass the examination, Respondent shall be suspended from the practice of physical therapy until a repeat examination has been successfully passed. Respondent shall pay the costs of all examinations.

21. Practice or Performance of Physical Therapy While on Probation

It is not contrary to the public interest for Respondent to practice or perform physical therapy under the probationary conditions specified in the disciplinary order. Accordingly, it is not the intent of the Board that this order, the fact that Respondent has been disciplined, or that Respondent is on probation, shall be used as the sole basis for any third party payor to remove Respondent from any list of approved providers.

22. Probation Monitoring Costs

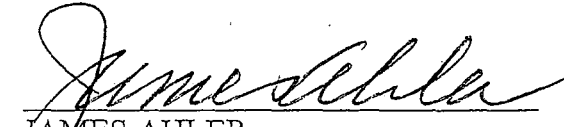
Respondent shall reimburse all costs incurred by the Board for probation monitoring during the entire period of probation. Respondent will be billed at least quarterly. Such costs shall be made payable to the Physical Therapy Board of California and sent directly to the

Physical Therapy Board of California. Failure to make ordered reimbursement within 60 days of the billing shall constitute a violation of the probation order.

23. Completion of Probation

Respondent shall comply with all financial obligations required by this Order (e.g., cost recovery, restitution, probation costs) not later than 180 calendar days prior to completion of probation unless otherwise specified in Order. Upon successful completion of probation, Respondent's license shall be fully restored.

DATED: 3/10/2011.


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE

OAH No.: 2010041195

I, Donna Dunson, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 1350 Front Street, Suite 3005, San Diego, CA 92101. On March 10, 2011, I served a copy of the following document(s) in the action entitled above:

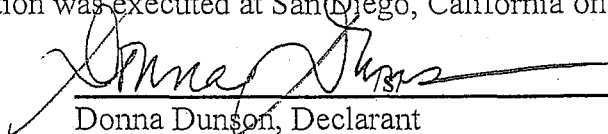
PROPOSED DECISION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

PHYSICAL THERAPY BOARD
2005 Evergreen Street, Suite 1350
Sacramento, CA 95815
Via GSO Overnight Delivery

☒ **Overnight Delivery.** I enclosed the above-described document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package with overnight delivery by an overnight delivery carrier at our office's regularly utilized drop box or at a location regularly utilized for collection and overnight delivery by an authorized overnight delivery courier for our office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at San Diego, California on March 10, 2011.



Donna Dunson, Declarant